

MICHAEL F. URBANSKI
Chief United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
210 FRANKLIN ROAD, SW. • ROOM 350
ROANOKE, VIRGINIA 24011-2208

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June 30, 2020

Via US Mail and Email: JEK318@gmail.com

James E. Kolenich, Esq.
Kolenich Law Office
9445 Waterstone Blvd. #140
Cincinnati, Ohio 45249

Re: *Elizabeth Sines, et al. v. Jason Kessler, et al.*
Civil Action No. 3:17-cv-00072-NKM (W.D. Va.)

Dear Mr. Kolenich:

This is in response to your subpoenas served on Hutton Marshall and Joshua Lefebvre, Law Clerks for U.S. District Judge Norman K. Moon in the Western District of Virginia, to appear and testify at a deposition July 22, 2020, in the above-reference case. Insofar as your subpoenas seek or pertain to any information arising from, or related to, the performance of their official duties, your request is hereby denied.

The federal judiciary's subpoena regulations, *Testimony and Production of Records*, govern the production or disclosure (including testimony) of official information by judiciary employees. See Subpoena Regulations (<https://www.uscourts.gov/rules-policies/judiciary-policies/subpoena-regulations>). In accordance with these regulations, disclosure requests are referred to the appropriate "determining officer," which in this instance ordinarily would be Judge Moon. See *id.*, § 840(b)(1). However, because Judge Moon is presiding in the above-referenced case, I am serving as the determining officer in my capacity as Chief United States District Judge for the Western District of Virginia, to avoid any conflict for Judge Moon.

A subpoena request may be denied if it fails to satisfy any requirement, procedural or substantive, of the regulations. See *id.*, § 850(a). Your subpoena fails include the information required by section 830(a) of the regulations. Section 830(a) requires a written explanation of the information being requested, its relevance to the matter in connection with which it is being requested, and why it is not readily available from another source or by other means. In addition, as you may be aware, Judge Moon issued a June 18, 2020 Order regarding motions filed in this case to recuse Messrs. Marshall and Lefebvre. The Order states that neither of them has had any involvement in this case. Moreover, the Order states that Judge Moon decided to completely screen them from any involvement in this case in August 2019, well before the recusal motions were filed. Accordingly, insofar as your subpoenas seek or pertain in any way to information

arising from, or related to, Messrs. Marshall and Lefebvre's official duties, the requests have been denied.

You also are advised that, consistent with this denial of your requests, if Messrs. Marshall and Lefebvre should appear and give deposition testimony in their private personal capacities, they must decline to answer any questions related to their official duties, as provided in sections 820(a) and 850(b),(d).

Sincerely,



Mike Urbanski
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ou=Western District of Virginia,
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Michael F. Urbanski
Chief Judge

Cc: Hutton Marshall
Joshua LeFebvre